

# **Replies of Hungary to the Questionnaire of the Special Rapporteur on the independence of judges and lawyers**

## **Basic information on the Hungarian Judicial system**

### **The Hungarian court system:**

Kúria (Supreme Court) (1) – its jurisdiction in criminal, civil and administrative cases covers the examination of municipal decrees as to compliance with the law, adjudication of extraordinary remedies and appeals, adopting uniformity decisions.

Regional courts of appeal (5) – their jurisdiction in criminal and civil cases covers the adjudication of appeals received from the regional courts.

Regional courts (20) – their jurisdiction in criminal, civil and administrative cases covers the adjudication of appeals received from district courts, administrative and labour courts, and procedure at first instance in certain criminal and civil cases.

District courts (112) – their jurisdiction in criminal and civil cases covers the procedures at first instance. The maximum permissible number of judges in the largest district court is 357, whereas the smallest court operates with one judge.

Administrative and labour courts (20) – their jurisdiction covers procedures at first instance in individual and collective labour disputes, and in administrative actions.

### **National Office for the Judiciary (NOJ):**

It is responsible for the central administration of the court system.

The president of NOJ shall provide for – with due regard to the constitutional principle of the judicial independence – the central duties of the courts' administration.

- The candidate for the presidency of the NOJ is recommended by the President of Hungary.
- The candidate must be a judge appointed for an indefinite period with at least 5 years judicial practice.
- The committee of the Parliament responsible for justice issues hears the candidate.
- The National Judicial Council hears the candidate and forms an opinion about him/her.
- The Parliament elects the candidate with the 2/3 majority of the votes for 9 years. No re-election is possible.

### **National Judicial Council (NJC):**

- The NJC is the supervisory body of the central administration of courts.
- The NJC consists of 15 members. The members are the president of Kúria (Supreme Court) and 14 judges.
- The 14 judge-members of NJC are elected by the electoral college of judges from among the electors by way of secret ballot with the majority of votes. Judges with at least 5 years of judiciary practice may be elected to be members of NJC.

- The NJC is headed and represented by the chairman. The position of the chairman of NJC is to be elected from among its members in rotation on a half year basis, starting with the judge with the longest period spent in service status as a judge.
- The session of NJC is open to judges, with the exception of the cases when the NJC orders the holding of a session in camera.
- In addition to the members of NJC, the following persons shall participate at the sessions of NJC (without the right to vote, just with the right of consultation): the President of the NOJ, the Minister of Justice, the General Prosecutor, the President of the Hungarian Bar Association, the President of the Hungarian Notary Publics' Association, the expert of the case invited by any the President of the NJC, and the representatives NGO's invited by the President of the NJC.

### **Judicial Councils:**

These are self-governing bodies elected by the judges at each Regional Court, Regional Court of Appeal and at the Kúria (Supreme Court). The members of the judicial council are elected by the conference of judges of the court for six years. It is the judicial council's authority to:

- form an opinion on appointing and transferring or delegating the judge without his/her approval, or dismissing the judge,
- it may initiate the examination of the president, vice president, head of group or deputy head of group of the district court and of the administrative and labour court, or his/her dismissal,
- it shall form an opinion on the annual budget plan of the court and on the utilisation of the approved budget, and
- it shall form an opinion on the organisational and operational regulations and the case allocation plan of the court.

### **Service Tribunal:**

It proceeds in

- disciplinary cases of judges,
- related compensation cases
- any legal disputes arising from the professional evaluation of the activities and of the managerial duties of judges.

In the disciplinary cases of judges the Service Tribunal shall proceed. The Service Tribunal of first instance is seated at the Regional Court of Appeal of Budapest, the Service Tribunal of second instance is seated at the Kúria (Supreme Court).

The members of the Service Tribunal are judges, elected by their peers by a secret ballot.

### **Budget of the court system:**

#### The President of the NOJ:

a) shall elaborate – with regard to the opinion of the NJC and the Kúria – his/her proposal on the budget of the courts and his/her report on the implementation of the budget, to be submitted without modification by the Government to the Parliament as part of the bill on the budget and the bill on the implementation of the budget,

- b) shall be invited to and participate at the sessions of the Government and the Parliament's budgetary committee discussing the budget of the courts' heading as a part of the bill on the budget and the bill on the implementation of the budget,
- d) shall exercise the duties related to the financial management of the courts,
- e) shall direct the internal control of the courts,

The NJC:

- a) shall express its opinion on the budget of the courts,
- b) shall examine the economic and financial management of courts,
- c) shall express opinions on the detailed conditions and levels of other benefits.

The National Accounting Office examines the financial management of the court system.

**1. The appointment procedure of judges**

- I. The President of the Court informs the President of the National Office for the Judiciary (NOJ) when a judge's position becomes empty.
- II. The President of the NOJ announces a public call for applications to the empty position.
  - a. To be appointed as a judge an applicant has to:
    - i. be Hungarian citizen
    - ii. have the capability to act
    - iii. have a university degree in law
    - iv. have passed the professional legal exam
    - v. give a property declaration
    - vi. have worked at least one year in a position in which the professional legal exam is needed
    - vii. pass a physical and psychical examination
    - viii. be at least 30 years of age.
- III. The Judicial Council forms an opinion about the applicants and ranks them by giving points to evaluate their skills and attributes.
- IV. The President of the Court makes a suggestion to the President of the NOJ, who should be appointed as a judge at the court.
  - a. When the President of the Court makes a suggestion to the President of the NOJ he/she can only suggest the applicant who is the 1st, 2nd or the 3rd in the ranking formed by the Judicial Council. If he/she suggests the 2nd or the 3rd, he/she must explain the reasons in a written form.
- V. The President of the NOJ submits a proposal to the President of the Republic who should be appointed as a judge.
  - a. The President of the NOJ can only propose the applicant who is the 1st, 2nd or the 3rd in the ranking formed by the Judicial Council. If he/she suggests the 2nd or the 3rd in order, he/she must explain the reasons to the National Judicial Council (NJC). The 2<sup>nd</sup> or the 3<sup>rd</sup> in ranking can only be suggested to be appointed if the NJC gives its consent.
- VI. The President of the Republic has the right to decide upon the appointment of a judge.

Those applicants who were not appointed have the right to file a complaint against the decision. The complaint shall be adjudicated by the Administrative and Labour Court.

If the successful applicant is already a judge, then there is no need for a re-appointment procedure: the judge is transferred by the President of the NOJ to the new position.

## **2. The dismissal procedure of judges**

- I. The reasons for the dismissal of a judge are stated in law:
  - a) if the judge resigned,
  - b) if the judge is ineligible for the fulfilment of the judicial office for health reasons on a long-term basis or was declared ineligible in the course of the inaptitude proceedings (by the Service Tribunal)
  - c) if a prison sentence or a sentence of community service was imposed on the judge on a final basis or the judge was subjected to forced psychiatric treatment,
  - d) if the judge failed to take the judicial oath within the time limit,
  - e) if the judge loses his/her Hungarian citizenship or the capability to act,
  - f) if the judge was elected as a Member of Parliament, Member of the European Parliament, local municipality board member or mayor or was elected or appointed as a state leader
  - g) if the judge enters into a legal relationship with an international organisation or any of the agencies of the European Union,
  - h) if the judge has completed the applicable old-age pension age or before the completion of this upper age limit, requests his retirement
  - i) if, in disciplinary proceedings instituted against the judge, removal from the office of judge was proposed as a final disciplinary sanction,
  - j) if it has been found in a judicial review procedure initiated against the result of the call for applications that the conditions for appointment as a judge had not been fulfilled,
  - k) if the judge willfully fails to meet the obligation to make a property declaration or willfully states data or facts incorrectly,
  - l) if the judge fails to meet his obligation to prove that he/she no criminal record, or is not prohibited from professions requiring a university degree in law,
  - m) if the judge fails to attend the medical examination ordered by the president of the court because of the possibility of the health-reasoned based ineligibility of the judge,
  - n) if the judge is appointed as the rector of a state institution of higher education or the head of a research centre or research institute,
  - o) if the judge terminated his service relationship unlawfully,
  - p) if the incompatibility of the judge was adopted with final decision
- II. If such reasons arise the president of the court informs the President of the NOJ.
- III. The President of the NOJ submits a proposal to the President of the Republic upon the dismissal of the judge.
- IV. The President of the Republic has the right to decide upon the dismissal of a judge.

**As it can be seen, the appointment and dismissal procedure of judges is a complex process in Hungary. There are many bodies included in the process with different scopes of authority. It has to be emphasized that every stakeholder in the procedure is part of the judicial system – with the exception of the President of the Republic, who formally appoints and dismisses judges.**

**The legal basis of the procedure is established partly in the Constitution and partly in**

**other constitutional laws as these can only be amended by 2/3 majority of the Parliament.**

### **3. Promotion of judges**

If by promotion we mean becoming a judge at a higher court this can only be a result of an open application procedure (detailed above).

Although there is a possibility to receive the title of “the honorary judge of the Kúria”, “the honorary judge of the Regional Court of Appeal”, or “the honorary judge of the Regional Court”. This possibility allows lower court judges who have a long judicial career to receive the title and salary of a higher court judges without leaving their position.

In the case of an “excellent, suitable for promotion” or “excellent and fully eligible” evaluation grade and minimum 6 years judicial practice at the given court level the NJC may award these titles to a judge of a lower court.

### **4. Suspension of judges**

During a disciplinary procedure the Service Tribunal may suspend a judge if the judge has been arrested during a criminal procedure, or an indictment has been filed against the judge or the presence of the judge at his/her office would endanger the \*\*\* disciplinary process. The suspended judge may appeal against this decision to the second instance Service Tribunal.

### **5. Transfer of judges**

#### **The temporary transfer (delegation) of judges**

Delegation means that the judge carries on his/her judicial activity temporary at another court. It always covers a certain period of time, after the delegation period ends the judge will carry on his/her work in his/her former position.

A judge can be delegated to another court to guarantee the even distribution of workload between courts or to support the development of his/her professional skills.

It is the authority of the president of the regional court to delegate a judge who is employed at the regional court or at the district courts under that regional court if the delegation is between these district courts or between the regional court and the district courts.

In any other case, the delegation of the judge is the authority of the president of the NOJ.

If the judge gives his/her consent the maximum time of the delegation is not defined, but it still has to be for a certain period of time.

Without his/her consent a judge only can be delegated for one year within a three year period and there are some judges that cannot be delegated at all to a court away from their residence without their consent (e.g a judge who is a single mother/father).

The opinion of the delegated judge must be heard. If the reason of the delegation is the professional development of the judge he/she only can be delegated by the request of the president of that court where the judge will be delegated to.

If the judge of the regional court is delegated somewhere outside of the venue of the court, or a judge of the regional court of appeal is delegated, the President of the NOJ must hear the opinion of the president of that court. The opinion of the competent judicial council also has to be heard. The judge can have judicial review at the Administrative and Labour Court against the delegation decision.

There are some judges that cannot be delegated at all to a court away from their residence without their consent:

- women judges from the diagnose of their pregnancy until the child becomes three years old,
- a judge who is a single mother/father,
- a judge who is taking care of a relative with a permanent disease,
- a judge who has a permanent illness.

Practically almost 100% of the delegations were carried out with the consent of the judges.

### **Transferring judges**

It is possible for a judge to continue his/her judicial work at a court different from the one to where he/she has been originally appointed, in the following cases:

- the judge successfully applied to an empty judicial position at another court,
- the court where the judge has been appointed to is dismissed or the venue of the court is substantially reduced and it is not possible to employ the judge at that court anymore.

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To apply to a judge's position at another court is the decision of the judge. If his/her application was successful and he/she wins the position, he/she will be transferred to that court. In this case the transfer is practically an appointment (but to another court) so the same procedure has to be taken as detailed above.

In the other case when a court is closed or the venue of the court is substantially reduced the President of the NOJ transfers the judge to another court without an application process.

First the President of the NOJ offers the judge the currently empty positions at another court of the same level (or maximum one level lower or one level higher) of which the application procedure has not been closed yet. The judge can choose from these empty positions.

If there is no such position to be offered or the judge doesn't choose from them the President of the NOJ transfers the judge to another court of the same level (or maximum one level lower) – with a special notice on the behalf of the judge. If the judge is transferred to a lower level court he/she gets the same salary as before and he/she is allowed to use his/her former title.

Before the decision the opinion of the competent judicial council has to be heard.

The judge can have judicial review of the decision at the Administrative and Labour Court.

Practically there were no judges to be transferred against their will as no courts were closed lately.

## **6. Disciplinary measures against judges**

In disciplinary cases of judges and in related compensation cases, as well in legal disputes arising from the professional evaluation of the judicial and leadership activities of judges, the Service Tribunal shall proceed.

If the suspicion of a disciplinary breach emerges in respect of a judge not holding the position of a court executive, disciplinary proceedings shall be initiated

- a)* by the president of the Kúria in the case of the judges of the Kúria,
- b)* by the president of the regional court of appeal in the case of regional court of appeal judges,
- c)* by the president of the regional court in the case of regional, district court and administrative and labour court judges.

If the suspicion of a disciplinary breach emerges in respect of a court executive, the person exercising the right of appointment shall initiate disciplinary proceedings.

The investigation during the disciplinary procedure is carried out by a disciplinary commissioner. The disciplinary commissioner is a member of the Service Tribunal, appointed by a panel of the Service Tribunal.

The disciplinary commissioner has to carry out the investigation within 30 days and present a written report to the Service Tribunal. After receiving the report the Service Tribunal decides within 15 days upon the initiation, refusal or suspension of the disciplinary procedure against the judge.

Disciplinary sanctions that may be imposed on judges committing disciplinary breaches:

- a)* reprimand,
- b)* censure,
- c)* demotion by one pay grade,
- d)* demotion by two pay grades,
- d)* exemption from the court executive position,
- e)* motion for dismissal from the judge's position.

Budapest, 16 January 2018